

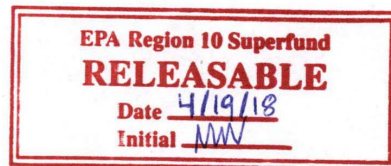


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June 20, 2011

VIA E-MAIL  
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Jeffrey M. Tatera  
Environmental Claim Specialist  
Truck Insurance Exchange  
Post Office Box 268994  
Oklahoma City, Oklahoma 73126-8994

Subject:      Truck Insureds:      Kaiser Cement and Kaiser Gypsum  
                 Policy Numbers:      350-40-00 (12/31/64-12/31/68)  
                                              350-40-00 (01/01/68-01/01/74)  
                                              350-40-00 (01/01/74-04/01/81)  
                                              350-40-00 (04/01/81-04/01/82)  
                                              N 00 03 4000 (04/01/82-04/01/83)  
                 Claim:                      Lower Duwamish Waterway Superfund Site ("Site")

Dear Mr. Tatera:

We received your letter dated May 12, 2011, on behalf of Truck Insurance Exchange ("Truck"). We understand that your letter responds to the tender letters dated December 17, 2010, sent to Truck by Kaiser Cement Corporation ("Kaiser Cement") and Kaiser Gypsum Company, Inc. ("Kaiser Gypsum").

Your response appears to combine the two claims into a single claim. Specifically, your letter refers to the two entities collectively as "Kaiser" and refers to the "site" as if they both operated at the same location. This is not the case. We reemphasize that Kaiser Gypsum and Kaiser Cement are separate legal entities that owned and operated facilities at different locations on the Lower Duwamish Waterway and received separate Section 104(e) information requests from the EPA. The two entities have separately responded to EPA's information request and continue to incur separate and distinct defense costs. Truck needs to assign separate claim numbers and analyze its coverage position for each of these entities separately.

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039391-0009/VANDOC5:50147227.1  
039391-0008 add 0009



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While we appreciate Truck's willingness to defend Kaiser Cement and Kaiser Gypsum pursuant to the terms of the policies identified above, we are concerned by your use of the term "adversarial proceeding" in your acceptance of the duty to defend. Truck's obligation under the policies is to defend Kaiser Gypsum and Kaiser Cement against any "claim or suit against the Insured."<sup>1</sup> There is no corresponding language in the policies requiring there to be an "adversarial proceeding" in order to trigger Truck's duty to defend.

As we stated in the tender letters, both Kaiser Gypsum and Kaiser Cement have received Section 104(e) information requests from the EPA. We believe that these information requests do trigger the duty to defend because these "requests" require Kaiser Cement and Kaiser Gypsum to defend themselves from claims that they are liable parties for the contamination at the Site.

We are not alone in our understanding that the EPA's Section 104(e) information requests trigger the duty to defend. The U.S. District Court of Oregon recently held that such requests are "equivalent to a 'suit seeking damages.'" *Ash Grove Cement Co., v. Liberty Mutual Ins. Co.*, No. 09-239-KI (D. Or. Sep. 30, 2010). Judge King reasoned that because of the substantial penalties available to the EPA, a Section 104(e) information request imposes an obligation on the recipient to investigate contamination. Judge King also wrote that "a reasonable insured could interpret the Section 104(e) letter as an effort to impose on policyholders a liability ultimately enforceable by a court, triggering the need for a defense." Kaiser Cement's and Kaiser Gypsum's situations here are identical to Ash Grove Cement's situation described in this recent case.

Here, EPA is requiring Kaiser Cement and Kaiser Gypsum to investigate their historical connection to the Lower Duwamish Waterway and their potential contribution to contamination at the Lower Duwamish Superfund Site (the "Site"). To effectively defend themselves, Kaiser Cement and Kaiser Gypsum must respond carefully to the EPA's questions. Truck has an obligation to participate in the defense and assist them in avoiding or limiting their liability related to their historical operations associated with the Site.

National Union has already acknowledged its duty to defend and has agreed to participate in the defense along with Kaiser Cement's and Kaiser Gypsum's other primary insurers. Accordingly, we request that Truck reconsider its coverage position and conclude that it has an immediate duty to participate in the defense of the

<sup>1</sup> See Section II of the Insuring Agreement in the Truck policies.

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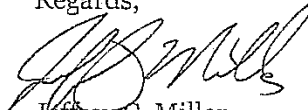
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EPA claim triggered by EPA's Section 104(e) requests. While awaiting your response, Kaiser Cement and Kaiser Gypsum have and will continue to protect their interests in this matter.

If you have any questions, please e-mail me at [jeff.miller@millernash.com](mailto:jeff.miller@millernash.com) or call me or Steve Hill at 360-699-4771.

Regards,



Jeffrey C. Miller

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039391-0009/VANDOC5:50147227.1  
039391-0008 and 0009